

# **Merton Council**

## **Licensing sub-committee**

**28 May 2015**

### **Notice of Determination**

4 Po Na Na Souk, 82 The Broadway, Wimbledon, SW19 1RH

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London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 4<sup>th</sup> June 2015

**Subject:** "Po Na Na Souk", 82 The Broadway, Wimbledon, SW19 1RH

Having considered relevant applications, notices and representations together with any other relevant information submitted to any Hearing held on this matter the Licensing Authority has made the determination set out in Annex A. Reasons for the determination are also set out in Annex A.

Parties to hearings have the right to appeal against decisions of the Licensing Authority. These rights are set out in Schedule 5 of the Licensing Act 2003 and Chapter 12 of the Amended Guidance issued by the Home Secretary (April 2012). Chapter 12 of the guidance is attached as Annex B to this notice.

### **For enquiries about this matter please contact**

Democratic Services  
Civic Centre  
London Road  
Morden  
Surrey  
SM4 5DX

**Telephone:** 020 8545 3616

**Fax:** 020 8545 3226 (**Please telephone 020 8545 3616 to notify faxes sent**)

**Email:** [democratic.services@merton.gov.uk](mailto:democratic.services@merton.gov.uk)

### **Useful documents:**

#### **Licensing Act 2003**

<http://www.hmso.gov.uk/acts/acts2003/20030017.htm>

#### **Guidance issued by the Home Secretary**

<http://www.homeoffice.gov.uk/>

#### **Regulations issued by the Secretary of State for Culture, Media and Sport**

[http://www.culture.gov.uk/alcohol\\_and\\_entertainment/lic\\_act\\_reg.htm](http://www.culture.gov.uk/alcohol_and_entertainment/lic_act_reg.htm)

#### **Merton's Statement of Licensing policy**

<http://www.merton.gov.uk/licensing/>

# Annex A

## Determination

The Licensing Sub-Committee considered an application made by Paul Iddon for the Premises Licence Review of “Po Na Na Souk” at 82 The Broadway, Wimbledon, SW19 1RH.

### Application

The Premises Licence Review arose from persistent noise escape from the rear emergency exit and the roof terrace and allegations of anti-social behaviour from the operation of the premises. Supporting Representations were received from the Metropolitan Police, the Environmental Health Pollution, the Director of Public Health, and on behalf of residents by Wimbledon East Hillside Residents Association (WEHRA). It was alleged by the Police that Po Na Na “is a significant crime generator in the Broadway area of Wimbledon particularly in respect of assault and theft” despite their comment that “the management of the premises have always been cooperative and willing to assist wherever possible”. EH Pollution Control were involved and had tried to make further inspections. The Public Health representation indicated the public nuisance and crime and disorder in the area surrounding this premises. Paul Iddon was accompanied by other residents of Kings Road as witnesses.

### Process

In discharging its functions in respect of this Review, the Licensing Sub-Committee had to take such steps as it considered appropriate and proportionate for the promotion of the licensing objectives, pursuant to section 52 of the Licensing Act 2003. The relevant objectives here were the Prevention of Crime, and Disorder and the Prevention of Public Nuisance. In reaching its decision, the Licensing Sub Committee considered the Council’s Statement of Licensing Policy, the Licensing Act 2003 (as amended), and where applicable, the relevant Licensing Act 2003 Regulations, the revised Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003, and relevant case law.

The Licensing Sub-Committee considered Police evidence, Responsible Authorities and Interested Parties evidence, , and the submissions, assurances and evidence given by the Premises Licence holder about their management of the premises.

The Licensing Sub-Committee were provided with legal advice in deliberations. This involved referral to the Thwaites case in terms of the evidence and their balancing exercise, the Luminar Leisure case in terms of issues occurring outside a premises, and the Guidance generally in respect of decision making.

### Decision

**The Licensing Sub-Committee decided to reduce the hours the premises operated and impose further conditions.**

**Reduction in hours:**

The Licensing Sub-Committee decided to reduce the licensing hours on Sundays, Mondays, Tuesdays, Wednesdays and Thursdays to 2am for licensable activities and 2.30am for the premises from 3.00am or 3.30am respectively.

**Conditions****The following conditions were imposed:****Conditions agreed with the Metropolitan Police:**

1. An electronic identification scanning device will be used at the premises and customers entering the premises may be asked to produce photographic identification and agree to the identification being used for scanning onto the device.
2. If the electronic scanning device fails, then the device will be replaced within five working days.
3. On Fridays and Saturdays after 22.00pm until closing a street warden shall be employed to monitor the outside of the premises so as to promote the licensing objectives.
4. All staff to receive training on the Licensing Act 2003 and the licensing objectives, on a regular basis.
5. All glasses used for drinking on the premises shall be polycarbonate.

**Conditions agreed with Public Health:**

1. Drinking water should be made proactively available (i.e. not only on request) in all parts of the premises where alcohol is sold for consumption on the premises.
2. No drinks are to be taken off the premises in open containers (e.g. glasses or open bottles (preventing use of containers as weapons, and to prevent consumption of alcohol in surrounding streets after individuals have left the premises)).
3. 'Drinkaware' will be promoted throughout the business website and drinking sensibly and appropriately will feature on any menus and marketing literature.
4. Prominent signage shall be displayed at all exits from the premises, requesting that customers leave quietly

**The Licensing Sub-Committee also imposed the following conditions:**

- a) That the roof terrace shall close at 11pm on Sundays, Mondays, Tuesdays, Wednesdays and Thursdays, and shall close at 00.00 midnight on Fridays and Saturdays.

- b) That acoustic attenuation measures shall be put in place for the rear fire exit door, to the satisfaction of the Environmental Health Pollution Control Manager.
- c) That the rear door shall be closed, save for emergency exit and egress, and an SIA door supervisor shall regularly monitor that the door is not open and that there are no customers located in the rear alleyway.
- d) The speakers shall be isolated from the structure of the building to the satisfaction of the Environmental Health Pollution Control Manager.
- e) A noise limiter shall be operated on the premises and its settings shall be assessed and approved by the Environmental Health Pollution Control Manager.
- f) That a litter pick and street cleansing shall take place outside the premises on Kings Road and The Broadway on a daily basis.

**The Licensing Sub-Committee made the following recommendations:**

- It would be preferred that there be two street wardens in attendance, one at the front and one at the rear of the premises between 22.00pm and 02.30am.
- It would be preferred that a zero tolerance approach is taken to anti-social behaviour issues by the street wardens, the aim being to move those loitering on as quickly as possible.
- It would be preferred that the terrace is used for smoking only.
- That the front entrance is managed to prevent loitering and excessive noise, through the SIA door supervisor, street wardens and management.

**Reasons**

The reasons for the decision were as follows:

1. The Licensing Sub-Committee considered that there had been noise escape from the roof smoking area, where 50 customers were permitted to smoke and consume alcohol .
2. The Licensing Sub-Committee considered that the rear door was being opened or left open, or was not being fully managed. The Licensing Sub-Committee considered that there was noise escape from the operation of the premises.
3. The Licensing Sub-Committee considered that the Metropolitan Police evidence showed that there had been crimes connected to this particular premises involving 25 allegations

between 28<sup>th</sup> April 2014 to 28<sup>th</sup> April 2015 including 13 thefts, 10 assaults, 1 affray, and 1 drug related offence.

4. The general and generic evidence provided did indicate that there were problems within the general area that were generating high levels of crime and disorder including those of public nuisance. Those were associated in part with this premises in the sense other premises were closed at the time that those issues were arising, but was evidenced by the Police evidence. It appeared that the premises was becoming or was a destination premises when other premises were closed or closing and that customers and other people loitered outside the premises late at night.
5. The Licensing Sub-Committee noted that some of the Public Health evidence was indicative of the area and not the actual premises' performance.

## **Annex B**

### **Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (April 2012).**

#### **12.Appeals**

12.1 This chapter provides advice about entitlements to appeal in connection with various decisions made by a licensing authority under the provisions of the 2003 Act. Entitlements to appeal for parties aggrieved by decisions of the licensing authority are set out in Schedule 5 to the 2003 Act.

#### **GENERAL**

12.2 With the exception of appeals in relation to closure orders, an appeal may be made to any magistrates' court in England or Wales but it is expected that applicants would bring an appeal in a magistrates' court in the area in which they or the premises are situated.

12.3 An appeal has to be commenced by the appellant giving of a notice of appeal to the designated officer for the magistrates' court within a period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision which is being appealed.

12.4 The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant, licence holder, club or premises user against the representations of a responsible authority or any other person, or the objections of the chief officer of police or local authority exercising environmental health functions, the holder of the premises or personal licence or club premises certificate or the person who gave an interim authority notice or the premises user will also be a respondent to the appeal, and the person who made the relevant representation or gave the objection will be the appellants.

12.5 Where an appeal has been made against a decision of the licensing authority, the licensing authority will in all cases be the respondent to the appeal and may call as a witness a responsible authority or any other person who made representations against the application, if it chooses to do so. For this reason, the licensing authority should consider keeping responsible authorities and others informed of developments in relation to appeals to allow them to consider their position. Provided the court considers it appropriate, the licensing authority may also call as witnesses any individual or body that they feel might assist their response to an appeal.

12.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.

12.7 On determining an appeal, the court may:

- dismiss the appeal;
- substitute for the decision appealed against any other decision which could have been made by the licensing authority; or



- remit the case to the licensing authority to dispose of it in accordance with the direction of the court and make such order as to costs as it thinks fit.

## **LICENSING POLICY STATEMENTS AND SECTION 182 GUIDANCE**

12.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it was justified to do so because of the individual circumstances of any case. In other words, while the court will normally consider the matter as if it were "standing in the shoes" of the licensing authority, it would be entitled to find that the licensing authority should have departed from its own policy or the Guidance because the particular circumstances would have justified such a decision.

12.9 In addition, the court is entitled to disregard any part of a licensing policy statement or this Guidance that it holds to be ultra vires the 2003 Act and therefore unlawful. The normal course for challenging a statement of licensing policy or this Guidance should be by way of judicial review, but where it is submitted to an appellate court that a statement of policy is itself ultra vires the 2003 Act and this has a direct bearing on the case before it, it would be inappropriate for the court, on accepting such a submission, to compound the original error by relying on that part of the statement of licensing policy affected.

## **GIVING REASONS FOR DECISIONS**

12.10 It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.

## **IMPLEMENTING THE DETERMINATION OF THE MAGISTRATES' COURTS**

12.11 As soon as the decision of the magistrates' court has been promulgated, licensing authorities should implement it without delay. Any attempt to delay implementation will only bring the appeal system into disrepute. Standing orders should therefore be in place that on receipt of the decision, appropriate action should be taken immediately unless ordered by the magistrates' court or a higher court to suspend such action (for example, as a result of an on-going judicial review). Except in the case of closure orders, the 2003 Act does not provide for a further appeal against the decision of the magistrates' courts and normal rules of challenging decisions of magistrates' courts will apply.

## **PROVISIONAL STATEMENTS**

12.12 To avoid confusion, it should be noted that a right of appeal only exists in respect of the terms of a provisional statement that is issued rather than one that is refused. This is because the 2003 Act does not empower a licensing authority to refuse to issue a provisional statement. After receiving and considering relevant representations, the licensing authority may only indicate, as part of the statement, that it would consider certain steps to be appropriate for the promotion of the licensing objectives when, and if, an application were made for a premises licence following the issuing of the provisional statement. Accordingly, the applicant or any person who has made relevant representations may appeal against the terms of the statement issued.